

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1265

H. P. 1239

House of Representatives, March 27, 1975

Referred to Committee on Marine Resources. Sent up for concurrence and 3,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Jackson of Yarmouth.

Cosponsor: Mr. Greenlaw of Stonington.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Manage, Regulate and Conserve the Lobster and Crab Fishery.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 12 MRSA c. 408 is enacted to read:

CHAPTER 408

MAINE LOBSTER FISHERIES LICENSING COMMISSION

§ 3571. Establishment of commission

To carry out the purpose stated in section 4404 and because of the temporary nature of the administrative burdens created by this chapter and in order to ensure that the objectives of this chapter are administered by those who are especially familiar with the unique requirements contained therein, there is created within the Department of Marine Resources, the Maine Lobster Fisheries Regulation Commission, hereinafter in this chapter called the "commission". The commission is charged with implementing section 4404 in all coastal waters of this State. The commission shall consist of 9 members to be appointed by the Governor with the advice and consent of the Executive Council. Six of the members shall respectively be one member representing York County, one member representing Washington County, one member representing Lincoln and Sagadahoc Counties, one member representing Waldo and Knox Counties, one member representing Hancock County and one member representing Cumberland County. These 6 members shall, by reason of experience and background, be intimately familiar with problems of the lobster and crab fishery in their respective counties. One member shall represent industry or commercial activity related to marine resources,

one member shall represent the public and one member shall be the Commissioner of Marine Resources.

§ 3572. Commission officers, meetings and vacancies

1. Officers. The commission shall elect from its own membership a chairman, a vice-chairman, a secretary and such other officers it deems necessary.

2. Meetings. Meetings shall be held at the call of the chairman or at the call of more than half of the membership. Such public meetings shall be held at least quarterly. The commission shall elect one of its members to fill a vacancy in any of the 3 named positions for the unexpired term at the next regular or special meeting following the vacancy.

3. Rules for conducting business. The commission may adopt such rules as it deems necessary for the conduct of its business.

4. Records. The secretary shall keep minutes of all the proceedings, which minutes shall be a public record available on file in the office of the Commissioner of Marine Resources.

5. Quorum. A quorum of the commission for the transaction of business shall be 5 members. When all commission members are not present, no action shall be taken by the commission except by majority vote and unless at least 4 members present at a duly called meeting of the commission concur on the proposed action.

6. Notice of hearings. Except in the case of emergency, written notice of meetings shall be given to each member.

7. Vacancy. If a vacancy occurs, the Governor, with the advice and consent of the Executive Council, shall appoint a member to serve the unexpired term.

8. Compensation. Members of the commission shall receive \$25 per day compensation for each regularly held meeting. They are entitled to receive, in addition, reimbursement for travel and meal expenses, which shall not exceed a total of \$5,000 for all the members in any one fiscal year.

§ 3573. Powers and duties

The commission has the following powers and duties:

1. After review of each application, the commission shall certify to the Commissioner of Marine Resources those eligible to be issued boat licenses provided in section 4404, and authorize the Commissioner of Marine Resources to issue an appropriate license to those eligible.

2. The commission shall promulgate rules, conduct hearings, provide application forms and information to applicants as necessary to effectuate the administration of this chapter.

3. The commission shall review the operation and efficacy of this chapter and present a report thereon with its recommendations regarding amendment, repeal or addition to any provisions of this chapter to the Legislature not later than January 1, 1980.

4. The authority conferred by this section shall terminate July 1, 1980 and the power granted herein shall be assumed by the Commissioner of Marine Resources and the Advisory Council.

Sec. 2. 12 MRSA § 4404, as last amended by PL 1973, c. 784, § 1, is repealed and the following enacted in place thereof:

§ 4404. Lobster and crab fishing

1. Purpose and findings of fact.

A. The Legislature finds that commercial fishing for lobster and crab resources has reached levels of participation, on both a state-wide and regional basis, that have impaired or threaten to impair the economic welfare of the fisheries of the State, the overall efficiency of the harvest, and the sustained yield management of the fishery resource;

B. That the State of Maine is the trustee of the coastal lobster and crab resources and that those resources are in jeopardy by reason of overexploitation; that certain fisheries have been substantially impaired and that present regulatory practices, including licensing restriction, have failed to assure that the resource will be conserved and developed so as to sustain its maximum yield for the benefit of the people as required by the trust obligations of the State. The Legislature further finds that the fair and rational method of preventing further depletion of the resource is by limiting entry into the commercial fishery in such a manner as to:

- (1) Not deprive those dependent for their livelihood on the fishery of their opportunity to continue to fish;
- (2) Assure a fair and reasonable method of entry for those who intend to pursue lobster and crab fishing as a livelihood; and
- (3) Provide a reasonable recreational fishing opportunity for other citizens of the State.

C. It is the purpose of this chapter to promote the conservation and the sustained yield management of Maine's lobster and crab fishery resource and the economic health and stability of commercial fisheries.

2. Definitions.

A. Advisory council. "Advisory council" shall mean the Advisory Council to the Department of Marine Resources pursuant to section 3551.

B. Boat. "Boat" shall mean any vessel or watercraft, which shall have been licensed by the Bureau of Watercraft Registration and Safety or issued a documentation number by the United States Government.

C. Boat license. "Boat license" shall mean a Class A, Class B, Class C or Class D license issued by the Department of Marine Resources for the operation of a boat for the purpose of taking lobsters and crab.

D. Commission. "Commission" shall mean the Maine Lobster Fisheries Licensing Regulation Commission.

E. Crab. "Crab" shall mean any edible sea crustacean of the sub-order, Brachyura, taken by traps or pots.

F. Earned income. "Earned income" shall mean gross income from harvesting marine resources plus adjusted gross income from all other sources providing personal services whether as employee or self employed but shall not include income received from investments, pensions, Social Security or other retirement benefits.

G. Harvesting. "Harvesting" shall mean the act of taking any marine animal or marine species.

H. Holder. "Holder" shall mean the person to whom any boat license shall be issued pursuant to the provisions of this section.

I. Lobster. "Lobster" shall mean the species *Homarus americanus*.

J. Medallion. "Medallion" shall mean the characteristic mark issued or required by the department for displaying the license number of a boat licensed under this section.

K. Person. "Person" shall mean one individual or any entity licensed to do business by the State of Maine, any other state of the United States, or the United States Government, or any foreign government or any other entity, including corporations but not limited to a firm, partnership, association, municipal or local government, quasi-municipal entity, cooperative or state agency.

L. Primary operator. "Primary operator" shall mean a person individually or in equal partnership with another who controls or control the use of a boat.

M. Regulated marine waters. "Regulated marine waters" shall mean all marine waters over which the State of Maine has regulatory authority.

N. Sternman. "Sternman" shall mean any person who works as a helper in the act of taking of lobsters or crabs by pot or trap.

O. Trap tag. "Trap tag" shall mean a small characteristic mark or label prescribed and issued by the department.

3. Applications for a license to operate a boat for taking lobsters and crabs. The following provisions shall apply to all classes of boat licenses provided for in this section unless a different intent is expressed in a subsection.

A. An application shall contain such information as the commission shall require consistent with the purpose of this section.

B. Upon meeting the qualifications required by this section, the commission shall direct the commissioner to issue to the applicant an appropriate boat license. A medallion will be issued in duplicate.

C. An applicant applying for a Class A or Class B boat license during the 90-day period following the effective date of this Act shall submit to the

commission information certified by a public accountant or certified public accountant on a certificate issued by the department to support the applicant's income qualifications.

D. Any holder of a boat license issued under the provisions of this section shall be permitted to transfer his boat license and medallions at any time to another boat. He shall give written notice of the transfer by registered mail or in-hand delivery to the coastal warden upon the form provided therefor by the department.

E. Any applicant under subsection 5, paragraphs A and B who fails to satisfy the stated qualifications may petition the commission for issuance of a license. If upon review of such petition the commission shall find that:

- (1) The applicant substantially meets the stated qualifications; and
- (2) Has shown by past employment practices a commitment to earning a living by commercial lobster fishing; and
- (3) The denial of a license to operate a boat for commercial lobster fishing would create an unreasonable hardship;

the commission shall issue the applicant the Class A license petitioned for.

F. Any party aggrieved by a decision under paragraph E may appeal to the Superior Court pursuant to the Maine Rules of Civil Procedure, Rule 80B.

G. All information submitted by the applicant to the commission to establish his qualification shall be confidential, except for appeals made under paragraph F.

4. Provisions applying to all boat licenses. The following shall apply to all boat licenses issued pursuant to this section:

A. All boat licenses shall become valid upon issuance.

B. No person shall hold more than one boat license issued under this section.

C. No boat shall be operated for the purpose of taking lobsters and crabs, the boat license for which is under revocation or suspension.

D. The holder of a valid boat license shall be responsible for complying with this section whether the holder or another person is operating the boat licensed to the holder.

E. The holder of a valid boat license may permit another to operate his boat for a temporary period of disability or absence up to 30 continuous days. If disability continues longer than 30 days, the licensee shall notify the commissioner of the expected length of disability accompanied by a physician's statement to support the claim. If the commissioner finds that the claim is valid, he shall issue a temporary permit to the individual who will operate the boat for the license holder valid for the expected length of disability.

5. Provisions governing Class A commercial boat licenses.

A. The following qualifications shall be required of applicants who apply within 90 days of the effective date of this Act for a Class A boat license for the taking of lobster and crabs:

- (1) Maine resident; and
- (2) That a minimum of 75% of applicant's earned income for any one of the calendar years 1971, 1972, 1973 or 1974 was derived solely from the harvesting of marine resources; and
- (3) That a minimum of 25% of applicant's earned income for the same year as selected in subparagraph (2) was derived solely from the taking of lobsters and crabs as the primary operator of a boat registered with Bureau of Watercraft Registration and Safety or documented by the United States Government; and
- (4) That for the year selected in subparagraph (2), the applicant landed or sold a minimum of 2,500 pounds of lobsters and crabs; and
- (5) That applicant was in the year chosen in subparagraph (2) at least 16 years of age.

B. After 90 days from the effective date of this Act, the following qualifications shall be required of an applicant for a Class A boat license:

- (1) Maine resident; and
- (2) Be 16 years of age or older;
- (3)
 - (a) Have held a Class B license for 3 years; or
 - (b) Have earned 50% of the applicant's earned income as a Class C license holder for 3 years; or
 - (c) Have earned 50% of the applicant's earned income as a sternman assisting a Class A license holder through the taking of lobsters for 3 years; or
 - (d) Have prior to the effective date of this Act fulfilled the requirements set forth in divisions (a), (b) and (c) by equivalent experience and reliance on commercial lobster fishing as employment; or
 - (e) Any combination of divisions (a), (b), (c) and (d), totaling 3 years.

C. It is the intent of the Legislature that the limited number of Class A boat licenses created by this section can be used as full commercial licenses and that such licenses not used in this manner be made available to persons who will so use them. Therefore, a Class A boat license shall be renewable annually upon payment of the required fee, provided that the license holder can show that in one of the 2 previous years 50% of his gross earned income was derived from the taking of lobsters and crabs or a minimum of 2,500 pounds of lobsters and crabs was landed and sold in the same year.

Any license holder not meeting this requirement shall be required to transfer his license according to the conditions set forth in subsection 6 unless the applicant can show that:

- (1) He was unable to meet the requirements set forth above because of temporary physical disability; or
- (2) He has substantially met the requirements set forth above; or
- (3) The denial of renewal of his license would create an unreasonable hardship; or
- (4) He was on active military duty longer than one of the 2 previous years.

6. Provisions governing transfer of Class A boat licenses. In order to encourage good conservation practices and to maintain the stability of the commercial lobster fishery, the transfer of Class A boat licenses is provided for as follows:

A. A Class A boat license may be transferred in one of 2 ways:

- (1) A licensee may transfer his license to his stepchildren or children, grandchildren, brother, sister, parents or grandparents whether related by blood or legal adoption or the spouse of the above if they meet the qualifications for application as set forth in subsection 5, paragraph B; or
- (2) Transfer the license to the Commissioner of Marine Resources.

B. Upon transfer of a Class A boat license as provided in paragraph A, the transferor shall immediately notify the commissioner on a form provided by the department. The transferee shall, within 60 days of said notice, give to the commissioner evidence that he fulfills the requirements set forth in subsection 5, paragraph B, subparagraph (3) and pay the required licensing fee. If within thirty days of receipt of the evidence and fee the commissioner finds that the transferee has fulfilled these requirements, he shall issue a license in the name of the transferee and cancel the license of the transferor; or if the transferee has failed to fulfill these requirements, the commissioner shall notify the transferor and the transferee and the license shall remain in the name of the transferor.

7. Number of Class A boat licenses. The number of Class A boat licenses shall be limited to the number of applicants who apply within 90 days after the effective date of this Act and subsequently qualify. If after this time, the commission finds that the reissuance of Class A licenses returned to the department in accordance with subsection 6, paragraph A, subparagraph (2); subsection 6, paragraph B and subsection 14 would result in a continuing depletion of the lobster and crab resource, it may direct the commissioner not to reissue up to 25% of the available Class A licenses which would have otherwise been issued to qualified applicants as listed in subsection 5, paragraph B. Alternatively, if the commission finds that the lobster and crab fishery may without adverse effect support additional licenses, the commission may direct the commissioner to gradually issue additional licenses to applicants who qualify under subsection 5, paragraph B. In any one

license year, the number of new licenses issued shall not exceed the number equal to 25% of the total number of licenses transferred in that year.

8. Provisions governing Class B commercial licenses.

A. The following shall be required of applicants who apply within 90 days of the effective date of this Act for a Class B boat license for the taking of lobsters and crabs:

(1) Maine resident;

(2) That a minimum of 30% of the applicant's total gross earned income as defined in this section for any one of the calendar years, 1971, 1972, 1973 or 1974 was derived solely from the harvesting of marine resources;

(3) That a minimum of 10% of the applicant's total gross earned income for the same year as selected in subparagraph (2) was derived solely from the taking of lobsters and crabs;

(4) That for the year chosen in subparagraph 2 the applicant was at least 16 years of age.

B. Any holder of an outstanding Class A license who has held a Class A license or a lobster and crab fishing license, or both, issued by the department prior to the effective date of this Act for 10 years and whose license is not under suspension, shall be issued a Class B boat license, upon application. Such application shall accompany notification to the commissioner of the transfer of the applicant's Class A boat license according to the provisions set forth in subsection 6.

C. A Class B boat license shall be renewable annually by the holder thereof, unless revoked, upon the payment of the required fee.

9. Provisions governing Class C boat licenses.

A. The following qualifications shall be required for a Class C boat license:

(1) Resident of the State of Maine;

(2) Twelve years of age or older;

(3) Statement of intent to pursue a commercial fishing career.

B. A Class C boat license may be issued to a person only once during his lifetime and, unless sooner surrendered or revoked, may be renewed annually for 7 consecutive years, but not to exceed 5 consecutive years for a license issued to an individual initially over 18 years of age.

C. There shall not be outstanding in any license year more than 2,000 Class C boat licenses.

D. No more than 500 Class C boat licenses shall be issued to individuals who, upon initial application, are 18 years of age or older.

10. Provisions governing Class D boat licenses.

A. An applicant for a Class D boat license shall be a resident of the State of Maine.

B. A Class D boat license shall not be transferable.

C. The number of Class D boat licenses shall be limited to 1,500 or the number issued between March 1, 1976 and March 31, 1976, whichever is less.

D. Applications for a Class D boat license shall only be received between March 1 and March 31 annually. The commissioner shall issue Class D licenses in the order of the receipt of such applications.

11. Lobster and crab traps or pots. The following provisions shall govern all traps and pots in the regulated marine waters:

A. It shall be unlawful for any person to set, raise or haul any trap or pot or string of traps or pots for any lobster or crab or to cause or allow the same to be done unless:

(1) He shall do so from a boat licensed under provisions of this section;

(2) He has a buoy attached thereto plainly carved or branded with the boat license number; and

(3) There is permanently attached to the trap or pot the trap tag issued by the commissioner for the current year.

B. It shall be unlawful for any person to set, raise or haul traps or pots or cause the same to be done in excess of the number permitted to each class of boat license as follows:

(1) Class A boat license — 600 traps or pots or combination thereof;

(2) Class B boat license — 200 traps or pots or combination thereof;

(3) Class C boat license — 150 traps or pots or combination thereof; and

(4) Class D boat license — 25 traps or pots or combination thereof.

C. The commissioner shall upon issuance of a boat license, and annually upon payment of the required license fee, issue trap tags identified according to the license year not in excess of the following number:

(1) Class A boat license — 660

(2) Class B boat license — 220

(3) Class C boat license — 165

(4) Class D boat license — 27.

D. The commissioner may issue new trap tags in the event of loss by storm, theft or accident.

E. The fee for each trap tag issued shall be 5¢.

12. Annual fees.

A. Annual renewal license fees for Class A, B and C boat licenses shall be paid between January 1st and April 30th of the license year as defined in paragraph B. Failure to reapply and pay the fee will result in revocation of the license by the commissioner.

B. The license year shall begin on the first of June of the year in which the fee is paid and shall run until the first of July of the following year, except that in the year 1976 licenses shall become valid on January 1, 1976 and shall remain valid until July 1, 1977.

13. Unlawful possession of lobsters and crabs. It shall be unlawful for any person to fish for, take or catch any lobsters or crabs in any manner without having a current written license as provided in this section.

14. Commissioner's issuance of outstanding Class A boat licenses. All Class A boat licenses acquired by the commissioner through surrender, revocation or other lawful means, for purposes of this section shall be aggregated to form a single pool of Class A boat licenses. The commissioner shall keep a list of persons, as defined in subsection 4, qualified to be issued a Class A license, ordered in receipt of application. The commissioner shall issue the outstanding licenses in the order that the names appear on the list. A person may refuse to accept a license issued by the commissioner without affecting the position of his name on the list. A person shall be notified that his name has been placed on the list and annually in January a copy of the list shall be mailed to each person whose name is on the list.

15. Funds. The funds received from revenues generated by the fees charged for trap tags shall be allocated to payment of additional costs generated by chapter 408 and this section, including but not limited to tags, medallions and commission expenses including clerical assistance, per diem and other actual expenses. Any remaining funds shall be allocated to costs of additional wardens necessary to enforce chapter 408 and this section.

16. Enforcement. Notwithstanding any other provisions of chapters 401 to 417, the following shall apply in addition:

A. Hearings. A hearing shall be conducted pursuant to the provisions of the Administrative Code, Title 5, chapters 301, 303, 305 and 307, for any alleged violation of the provisions of this section, for which the penalty imposed shall be revocation of a boat license.

B. Revocation. The commissioner shall revoke for the period of one year from the date of revocation any boat license of any person who shall be found after a hearing under this subsection to have been:

(1) Convicted in a court of competent jurisdiction of:

(a) An assault or other serious crime upon a coastal warden in the performance of his duties; or

(b) A fourth or subsequent violation under this section, or under section 3752 or a combination thereof; or

(2) To have made, in evidencing qualifications required by this section, any fraudulent statement.

C. **Suspensions.** Suspensions shall be governed by the provisions of section 4302-B.

D. **Penalties.** Penalties for violations of the provisions of this section shall be governed by the provisions of section 4504.

17. **Severability.** The provisions of this Act shall be severable. If any section, subsection, paragraph or other divisible part of this Act shall be held invalid, or ineffective, in whole or in part, or inapplicable to any person or situation, it is the purpose and intention of this Act that all other portions thereof shall, nevertheless, be separate and fully effective and the application of any such provisions to persons or situations shall not be affected.

FISCAL NOTE

Enactment of this bill will result in a gain of approximately \$75,000 in each year of the next biennium.

STATEMENT OF FACT

The past year, a federal court struck down as constitutionally invalid the three-year residency requirement for lobster fishing, the only restriction the State had imposed on exploitation of this invaluable resource. The result was to jeopardize further this important Maine fishery, a resource already over exploited.

As stated in the legislative findings and purpose, the objective of this bill is the conservation of Maine's lobster and crab fisheries. This will be accomplished by a limited entry licensing system and by a limit on traps being fished.

The bill sets up 4 classes of licenses, A, B, C and D, and places a trap limit for each class. The first 2, Classes A and B, are issued under an initial entry system that will protect the continuation of the livelihood of the serious commercial fishermen. The system limits the number of licenses by the applicant's past income and weight of catch in one of the past 4 years of fishing. After termination of the initial entry period, A and B licenses are renewable annually by the holder. The Class A license may be transferred to the fisherman's immediate family or to the Maine Department of Marine Resources. An apprentice system is established and after the initial entry period any person fulfilling the apprenticeship requirements may qualify for an A license.

The remaining 2 licenses, C and D, are substantially less limited than the A and B licenses. A "C" license, which permits 150 traps, is renewable each year for a maximum period of 7 years. It is an apprentice's license and through it, a person may qualify eventually for an "A" license. A "D" license

permits 25 traps and is intended as a limited public noncommercial license. A holder of a "D" license may renew it only if a "D" license is still available when his application therefor is processed.

The Bill will also set up a Commission made up of persons knowledgeable and interested in the resource and geographically representative of the State's fisheries. This Commission will oversee the first few years of the new law and will handle appeals for entry into the license classes. The Commission will terminate on July 1, 1980, with its powers then being vested in the Commissioner of Marine Resources and the Advisory Council. Prior to its termination, the Commission will report to the Legislature on the state of the fishery and the law's effect on the fishery. The Commission may comment on all aspects of the law and may recommend its repeal or major modification. This bill is intended to fulfill the State's obligation as trustee to protect and develop this important State resource.